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April 17, 1997

Office of the Secretary
William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Subject: WT Docket 97-81
Amendment of the Commission Rules Regarding Multiple Address System
Notice of Proposed Rulemaking adopted February 19, 1997: FCC 97-58

Dear Mr. Caton:

Enclosed is an original and nine (9) copies of my comments on the Notice of Proposed Rulemaking for filing in the above captioned proceeding.

Sincerely,



Stanley I. Cohn

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Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Amendment of the Commission's Rules)
Regarding Multiple Address Systems)

WT DOCKET NO. 97-81

References: NOTICE OF PROPOSED RULE MAKING
Adopted February 19, 1997: FCC 97-58

I. Introduction

Stanley I. Cohn, an individual who submitted applications for 21 licenses in the 932/941 MHz MAS band during January - February 1992 filing window, submits the following comments regarding the referenced Notice of Proposed Rulemaking. As a part of this proceeding, the Commission proposes to dismiss without prejudice over 50,000 applications submitted during the above-mentioned filing window.

These comments specifically address and oppose the provisions regarding the dismissal of the application filed during the January-February 1992 window.

II. The 932/941 MHz Band Applications

During the January-February 1992 filing window over 50,000 applications for licenses in the 932/941 MHz band were submitted to the Commission. The applications could be filed either using FCC Form 401 for Common Carrier Applications (with an application fee of \$230.00 per transmitter) or using FCC Form 402 for the Private Operational Fixed Microwave Radio Service (with an application fee of \$155.00 per application). It was generally understood that most submittals for this

band would result in mutually exclusive applications and that a lottery would be held to determine which applications would be granted.

Assuming that most of the applications were submitted under the Private Radio Service rules, the total of application fees received by the Commission exceeded \$7.75 million. In addition to filing fees, applicants generally incurred engineering and legal fees associated with preparing and submitting applications.

The Commission notes¹ that: . . . *"It is also our view that, by fostering the rapid deployment of MAS services, auctions will serve Congress' goal of bringing new services as expeditiously as possible to the public, including rural areas. With more than 50,000 pending applications, subjecting these to a lottery process would be time-consuming and complex. Several months would be spent simply establishing chains of mutual exclusivity among the applicants. During a comparable period of time, an auction for the same frequencies could be completed. In this respect, we observe that processing of more than 50,000 220-222 MHz applications using the lottery procedure took more than two years to complete. In addition, unlike lotteries or comparative hearings, auctions will result in recovering for the public a portion of the value of the spectrum. Finally, we believe that the rapid award of licenses through the auction process will promote efficient use of the MAS spectrum."*

The Commission has had the 50,000 MAS applications pending for more than five years. Although the 220-222 MHz took over two years to complete (applications filed May 1991, lottery held October 1992, tentative selectees announced January 1993, licenses issued primarily from April 1993 through October 1993) it is understood that a large portion of this time was spent in developing and refining the computer programs and procedures used in the lottery. Minimum distance separation

¹ Notice at ¶ 51.

between various applications filed by each applicant were determined to ensure compliance with the rules concerning number of systems authorized in a geographic area (Section 90.739). Co-channel separation requirements of Section 90.723(f) of the rules were also factored into the process.

A lottery for the 932/941 MHz MAS band would involve similar procedures to those used in the 220-222 MHz band but with different values for distance separations between each applicant's application and different values for co-channel separation. Thus, the procedures and computer programs utilized in the 220-222 MHz band lottery could have been readily adapted to the lottery for the 932/941 MHz MAS band. This would have significantly reduced the time required to issue licenses through the lottery process. Had the Commission proceeded with the lottery in an expeditious manner, the Congressional goal for new services would probably have been met prior to the enactment of the Omnibus Budget Reconciliation Act of 1993, which authorized competitive bidding, and there would have been no question concerning the process (lottery or auction) used to grant these licenses.

During this five-year period, a number of informal phone inquiries were made to Commission staff members regarding when the lottery would be held. The reply was generally always the same; the lottery will be held in about three or four months. The repeated delays in conducting a lottery leads one to believe that perhaps the reason was to initially wait until the Congress had provided the authority to conduct auctions and to convert from lottery to auction in order to reap the additional income that auctions would bring through the sale of MAS spectrum.

The contention that the rapid award of licenses through auctions will promote efficient use of the MAS spectrum seems to be contrary to the fact that the MAS applications have been pending for five years and during that time no use of the spectrum occurred. This is obviously not efficient

and could have been avoided had the lottery been conducted in an expeditious manner. The Commission's actions to date have therefore, not promoted efficient use of the MAS spectrum.

To make up for the past inaction, the Commission is proposing² to use competitive bidding to expedite the licensing at the expense of the applicants who have been put on hold for five years. This is not in the public interest and represents a breach of faith with the applicants. If a private company, instead of the Commission, had taken the above described actions, there would have been legal action taken against them for fraudulent practices.

The Commission, when comparing auctions and lottery, states³ the problems associated with lotteries are “ . . . *speculative conduct and a resultant delay in service to the public.*” Speculation is defined by the Webster New Collegiate Dictionary as “to assume a business risk in hope of gain.” On February 19, 1997, the Commission held the Auctions '97 Conference. A clear message in that conference was that the bidders are taking a risk and the FCC does not guarantee that a profit will be made on any spectrum acquired in an auction. This message is also delivered in the footnote (102) to ¶ 59 of the Notice. The auctions as well as the lotteries definitely involve speculation. As to the delay in service associated with the MAS lottery (which was never held), most of the cause for the delay was due to the Commission's action as noted previously.

The Commission also believes, in the context of MAS, that use of auctions will reduce administrative costs, further efficient licensing and expedite service to the public.⁴ Again, the Commission, by taking no action on the over 50,000 MAS applications for over five years did not

² Notice at ¶ 52.

³ Notice at ¶ 53.

⁴ Notice at ¶ 55.

appear to be interested in expediting service to the public. Suddenly they want to use auctions to achieve this goal in a cost efficient manner.

The Commission also notes⁵ that spectrum was available that was “substitutable in every respect” during the pending time of the 50,000 MAS applications. Why then, did the Commission not include this spectrum in the lottery process and expand the 932/941 MHz band by adding the additional frequencies? Instead, the Commission apparently expected the original 932/941 MHz applicants to apply again and incur additional filing, engineering and legal fees. These expenditures, which the Commission describes as “little” are never-the-less significant. If many of the 932/941 MHz applicants had applied for the alternate “substitutable” spectrum, there would have been a mutual exclusive situation similar to the original 932/941 MHz case. Again, it is uncertain how this would have been handled and the applicants for the additional “substitutable” spectrum might still be waiting for a determination of which applicants would have been awarded licenses.

The Commission’s desire to accelerate licensing of the 932/941 MHz MAS band by auctions may not prove to result in more expeditious granting of the licenses than would result from proceeding with the lottery. It is very probable that a number of the original applicants would take legal action against the Commission that could result in lengthy, time consuming Court proceeding which would delay issuing of licenses by either lottery or auction.

III. Conclusion

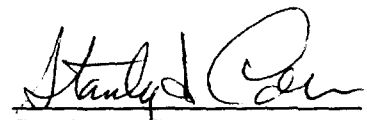
The Commission should proceed to conduct the lottery for the 932/941 MHz MAS band as soon as possible. This is the most expeditious way to grant these licenses. This is in the public interest. The methodology necessary to conduct the lottery has been used in the 220-222 MHz band and can readily be adapted to the 932/941 MHz band. Once license locations are determined, the use

⁵ Notice at ¶ 57.

of geographic area licensing may or may not be advisable. The use of auctions should then be considered if geographic licensing is advisable. To dismiss the over 50,000 pending applications will most likely result in long delays in granting any licenses in the 932/941 MHz band because of likely litigation. This would not produce a result that would be in the public interest.

Respectfully submitted,

By:

A handwritten signature in dark ink, appearing to read "Stanley I. Cohn", written over a horizontal line.

Stanley I. Cohn
801 Bermuda Court
Annapolis, Maryland 21401

Dated: April 17, 1997